



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Department of Health (State Board of)
<b>VAC Chapter Number:</b>	12 VAC 5-120
<b>Regulation Title:</b>	(Emergency) Regulations for Testing Children for Elevated Blood-Lead Levels
<b>Action Title:</b>	Adopt regulations to implement a program for testing children to determine those who have elevated blood-lead levels as required by 2000 legislation
<b>Date:</b>	August 15, 2000

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

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Senate Bill 725 (Acts of Assembly, c. 907, 2000) amended the Code of Virginia by adding sections numbered 32.1-46.1 and 32.1-46.2, relating to the testing of children for elevated blood-lead levels, and requires the Board of Health to promulgate regulations to implement the provisions of § 32.1-46.1 within 280 days of enactment. The legislation was enacted April 9, 2000. This regulation is not exempt under the provisions of § 9-6.14:4.1(C)(4).

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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Section 32.1-46.1 of the Code of Virginia directs the Board of Health to promulgate regulations establishing a protocol for the identification of children at risk for elevated blood-lead levels which shall provide (i) for blood-lead level testing at appropriate ages and frequencies, when indicated, and (ii) for criteria for determining low risk for elevated blood-lead levels and when such blood-lead level testing is not indicated. The protocol may also address follow-up testing for children with elevated blood-lead levels, dissemination of the protocol and other information to relevant health care professions, appropriate information for parents, and other means of preventing lead poisoning among children.

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The intended regulations will establish a protocol for testing children for elevated blood-lead levels. The intended protocol is based on guidelines published by the Centers for Disease Control and Prevention to assure a sound scientific basis for effective and efficient identification of elevated blood-lead levels that will protect the health of citizens.

Article 1 of the intended regulations (sections 10 through 50) contains provisions that define key terms and set forth general information relating to the protocol for testing children for elevated blood-lead levels. These provisions include a statement of the general policy, purpose and administration of the regulations.

Article 2 (sections 60 through 100) of the intended regulations sets forth the protocol for identifying children with elevated blood-lead levels. The protocol includes the ages and frequencies of testing, time limits for confirming screening tests, criteria for determining low risk for elevated blood-lead levels and when blood testing is not indicated, and provisions for providing guidelines for follow-up testing and appropriate information to parents and health care professionals.

No potential issues have been identified that may need to be addressed as a permanent final regulation is developed.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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In light of the clear, specific, and mandatory authority of the State Board of Health to promulgate the intended regulations, the Board has not considered any alternatives to the intended regulations. The Board has, however, carefully drafted the intended regulations to ensure that they embody the most appropriate, least burdensome, and least intrusive protocol for effectively identifying children with elevated blood-lead levels. The Board considered the guidelines of the Centers for Disease Control and Prevention and the recommendations of a state advisory group consisting of private physicians, public health professionals, and parents of lead-poisoned children.

In drafting the intended regulations, the Board considered alternatives that would have required testing of all children without regard to risk status, annual testing to age six years, and testing of venous blood only. In all cases the Board accepted the recommendations of the state advisory group for less burdensome and less intrusive alternatives for achieving the essential purpose of the regulations. The intended regulations exempt low risk children from testing, require testing after two years of age only if the child was not previously tested, and allow for testing of capillary blood. The Board chose to address follow-up testing for children with elevated blood-lead levels, dissemination of the protocol and other information to relevant health care professions, appropriate information for parents, and other means of preventing lead poisoning among children through guidance documents rather than regulation.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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1. The intended regulations will strengthen the authority of parents in the supervision of their children by providing a protocol for parents to use with health care providers to ensure that children receive appropriate testing for elevated blood-lead levels. Early identification of children with elevated blood-lead levels will alert parents and guardians to the need for intervention to prevent physical, developmental, behavioral, social, and learning problems associated with elevated blood lead levels in children.
2. The intended regulations will encourage economic self-sufficiency for one's children. Children with elevated blood-lead levels have been shown to suffer the adverse effects of decreased intelligence, behavioral disturbances, and developmental disabilities. Lead has lasting effects on the health of children that reach well into their adult years.
3. The intended regulations will neither strengthen nor erode the marital commitment.
4. The intended regulations will decrease somewhat some families' disposable income in the short term for those families with children not covered by health insurance for blood-lead level testing. The intended regulations will increase disposable family income in the long term for those families with children with elevated blood-lead levels as the source of lead poisoning would be identified and controlled before medical treatment is needed or the lead significantly effects the developing brain and nervous system. Such effects can be associated with increased medical and social costs over a person's lifetime.

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